

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office action dated March 24, 2006 are respectfully requested.

I. Rejection under 35 U.S.C. § 102

Claims 1-20 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Edwards *et al.* (U.S. Patent No. 5,370,675).

These rejections are respectfully traversed.

A. The Present Invention

The present invention, as embodied by claim 1, describes a method of controlling an ablation volume depth during surface treatment of a target tissue site. The method includes a step of providing a tissue surface treatment apparatus comprising a housing having a proximal end and a distal end including a tissue contacting surface having at least one aperture, the housing defining an interior, an energy delivery device including a plurality of electrodes, each with a tissue penetrating distal end, the plurality of electrodes configured to be advanced from the housing interior through the at least one aperture and into a target tissue site to define an ablation volume at least partly bounded by the tissue surface; an advancement device disposed inside the housing interior and being coupled to the energy delivery device, the advancement device configured to selectively advance individual electrodes of the plurality of electrodes from the housing interior to a selected deployment depth.

B. The Prior Art

EDWARDS ET AL. describe a medical probe device for treatment of the hyperplastic tissues of the prostate to treat benign prostatic hyperplasia. The probe comprises a catheter and a stylet guide housing positioned at the distal end of the catheter for directing one or more flexible stylets out of the catheter and into the tissue.

C. Analysis

The method of instant claim 1 includes providing an apparatus including a housing having a proximal end and a distal end including a tissue contacting surface having at least one aperture. As seen in Fig. 1, electrodes are deployed from the housing interior through the at least one aperture into the tissue surface.

Edwards *et al.* fail to teach a step of providing such an apparatus. As seen in Fig. 2, the apparatus as described by Edwards *et al.* includes a stylet guide 16 that is positioned between annular balloons 30 and 32. Stylets 36 are deployed radially from the stylet guide to the side of the catheter. The apertures of the Edwards *et al.* device are positioned circumferentially around the stylet guide and not in a tissue contacting surface at the distal end of the housing.

The Examiner further points to Fig. 14 for a teaching of the step of providing an apparatus as presently claimed. However, this figure shows a "four-probe embodiment of the device" (Col. 14, lines 12-13) with a handle portion 180 and a catheter portion 182. As seen in the figure, the stylets are deployed radially from the side of the catheter probe.

In fact, nowhere does Edwards *et al.* teach a step of providing an apparatus as claimed or of positioning the tissue contact surface on a target tissue surface as claimed. Nor could the stylets deploy from the distal end of the Edwards *et al.* device. The device is especially designed to deploy a flexible catheter through the urethra to a position adjacent the prostate. The stylets are deployed into the urethral wall and into the prostate. Based on the anatomy of the method as described in Edwards *et al.*, were the device to include a tissue contacting surface at the distal end of the device, the stylets could not be deployed into the prostate for treatment.

As the catheter and stylet guide of Edwards *et al.* do not have a distal end including a tissue contacting surface having at least one aperture as required by the present claims, the reference cannot be considered anticipating of the present claims.

With regard to claims 10 and 20, the arguments presented above for patentability over the cited document are applicable to the methods described therein.

Accordingly, Applicants submit that standard of strict identity to maintain a rejection under 35 U.S.C. § 102 has not been met. Withdrawal of the rejections under 35 U.S.C. § 102(b) is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants submit that the claims pending in the application are in condition for allowance. A Notice of Allowance is therefore respectfully requested.

The Examiner is invited to contact Applicants' representative at (650) 838-4410 if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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